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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Nevada Bell, Pacific Bell and)
Southwestern Bell Telephone Company)
Petition for Forbearance of Section)
272 of the Communications Act, as)
Amended, to Provide Reverse Directory)
Services)

CC Docket No. 98-193

COMMENTS OF MCI WORLDCOM, INC.

Pursuant to the Commission's recent Public Notice,¹ MCI WorldCom, Inc., by its undersigned attorneys, hereby partially opposes the Petition for Forbearance filed by the Southwestern Bell Telephone Company (SWBT), Nevada Bell and Pacific Bell (collectively, "SBC") from the application of Section 272 of the Communications Act to SBC's electronic and operator assisted reverse directory assistance (RDA) services to be provided on an interLATA basis. As explained below, SBC may not provide interLATA operator assisted RDA services unless and until it has obtained authorization under Section 271 of the Communications Act to provide in-region interLATA services. Moreover, forbearance from the application of Section 272 to its electronic interLATA RDA service cannot satisfy the requirements of Section 10 of the Communications Act² unless SBC changes some of its current practices and actually meets the nondiscrimination criteria that it promises to fulfill in its Petition.

¹ Pleading Cycle Established for Comments on SBC Petition for Section 272 Forbearance for Reverse Directory Services, CC Docket No. 98-193, DA 98-2210 (released Oct. 29, 1998).

² 47 U.S.C. § 160.

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Background

SBC states in its Petition that SWBT currently offers an electronic RDA service that allows customers direct on-line access to a single, centralized database, which is separate from the directory assistance (DA) databases used by SWBT local DA operators. SWBT does not provide any interLATA transmission associated with this service. Any interLATA calls to the service platform are carried by the caller's interexchange carrier. SBC points out that the Commission previously granted SWBT a limited waiver of the Comparably Efficient Interconnection (CEI) requirements to provide reverse search capability in conjunction with SWBT's white pages capability.³

SBC states that because of technical deficiencies associated with the current electronic RDA platform, SWBT intends to migrate the service to the four databases used to support its local DA service. One of those four databases will become the interface for the new electronic RDA service. A call to SWBT's electronic

³ SBC Pet. at 2-3, citing Southwestern Bell Telephone Company Petition for Waiver of Computer III Rules for Reverse Search Capability, 11 FCC Rcd. 7997 (1996) (SWBT CEI Waiver Order). SBC also asserts, at 2, that the Commission also upheld the integrated provision of SWBT's electronic RDA service in Southwestern Bell Telephone Company Petition for Waiver of Section 69.4(b) of the Commission's Rules, Revisions to Tariff F.C.C. No. 68, 5 FCC Rcd. 3792 (1990) (SWBT Access Waiver Order), which found it to be an "adjunct-to-basic" service. That is incorrect, since electronic RDA in fact is an enhanced service (or, under the Telecommunications Act of 1996, an information service), as found in the SWBT CEI Waiver Order at ¶ 22. The SWBT Access Waiver Order specifically stated that its "adjunct-to-basic" finding was strictly limited to SWBT's electronic DA service and that "[w]e express no opinion as to the proper regulatory status of 'reverse search' directory assistance." 5 FCC Rcd. at 3794, n. 9.

RDA service under the new system will still be carried by the caller's interexchange carrier, but if the listing information is not in the DA database that will serve as the interface for the RDA service, that database will then query the other three databases to obtain the requested information. That query, which will be carried over SWBT's official services network, will be an interLATA transmission. SBC also notes that Pacific Bell and Nevada Bell may offer an electronic RDA service in the future, which may well be provided using the same network architecture as is contemplated for SWBT's electronic RDA service.

SBC is also applying for authority to provide operator assisted interLATA RDA service on an integrated basis. A caller to this service would dial the same operator that provides local DA service (411), who will be located in the same LATA as the caller. The operator would then retrieve the requested information from one of the four DA databases and convey it to the caller. If the relevant database is located outside the operator's LATA, the query would be transported over the official services network.

A. Operator Assisted RDA is Not an Incidental Service

SBC recognizes that in order to be able to provide interLATA RDA service at all, prior to the grant of in-region interLATA authority under Section 271 of the Communications Act, it must first demonstrate either that such service was previously authorized under the MFJ, which is not the case, or that it is an incidental interLATA service under Section 271(g) of the Act.

SBC relies on subsection (4) of Section 271(g), which defines as one category of incidental interLATA service, "a service that permits a customer that is located in one LATA to retrieve stored information from ... information storage facilities of such company that are located in another LATA."

In the BOC Forbearance Order,⁴ the Commission recognized that BellSouth's "home NPA" service, which is also an interLATA electronic RDA service, is an incidental interLATA service under Section 271(g)(4). SBC is clearly correct that its electronic RDA service, as it intends to structure that service, will be an incidental interLATA service within the meaning of Section 271(g)(4), and SBC therefore may provide such a service without Section 271 authority.

SBC argues that the "same concept applies to" its operator assisted RDA service, since the operator is simply accessing a directory database in another LATA for the caller.⁵ Operator assisted services, however, which go beyond the retrieval of stored information, clearly do not fall within Section 271(g)(4). To the extent that any ambiguity as to the coverage of subsection (4) of Section 271(g) might otherwise exist, Section 271(h) resolves such ambiguity in favor of limited coverage in stating that "[t]he provisions of subsection (g) are intended to be

⁴ Bell Operating Companies Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, As Amended, to Certain Activities, CC Docket No. 96-149, DA 98-220 (released Feb. 6, 1998), petition for recon. pending.

⁵ SBC Pet. at 6.

narrowly construed." SBC's proposed operator assisted RDA service is therefore not an incidental service under Section 271(g)(4) and thus may not be provided, whether through a separate affiliate or otherwise, unless and until SBC obtains in-region interLATA authority under Section 271.

B. Forbearance From Section 272 Should be Granted Only on Condition That SBC Cease its Discriminatory Practices

As SBC acknowledges, incidental interLATA services, such as its electronic RDA service, are subject to the separation and nondiscrimination requirements of Section 272. SBC argues, however, that forbearance from the application of Section 272 to its RDA service is warranted under the standards of Section 10 of the Act as interpreted in the BOC Forbearance Order. Section 10 requires the Commission to forbear from applying any provision of the Act if it determines that: enforcement of such provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in conjunction with a carrier or service are just and reasonable and not unreasonably discriminatory; enforcement of such provision is not necessary for the protection of consumers; and forbearance is consistent with the public interest. 47 U.S.C. § 160(a).

SBC asserts that relief under Section 10 is required to enable SWBT to integrate its RDA service, which SWBT has been providing since 1990, with its standard DA service. Without the ability to provision the RDA service using the existing DA database architecture, the RDA service may no longer be economically viable. Relief would therefore promote competition,

according to SBC, and further the public interest by enabling SBC to continue providing RDA service economically.⁶

SBC cites the BOC Forbearance Order for the proposition that forbearance from the application of Section 272 to a BOC's interLATA RDA service meets the criteria of Section 10 if the BOC agrees to make available to competing RDA providers all listing information that it uses to provide its own RDA service at the same rates, terms and conditions that it imposes on its internal RDA operations. SBC pledges to do so as a condition for such forbearance, asserting that it already provides non-discriminatory access to directory listing information through its interconnection agreements with competitive LECs, as required by Section 251(b)(3). It also asserts that if state commission approved agreements set rates for the provision of listing information different from those that would be required by a nondiscrimination requirement, the terms of the agreements "shall control."⁷

MCI WorldCom has a vital interest in the BOCs' directory databases, including SBC's, for its own DA and RDA services and other purposes and, pursuant to its rights under Sections 251 and 252 to dialing parity and unbundled network elements, has negotiated agreements with the BOCs for access to those databases. MCI WorldCom agrees that forbearance from the application of Section 272 to SBC's RDA service would be

⁶ SBC Pet. at 7-9.

⁷ Id. at 7-8 & n. 16.

appropriate if the nondiscrimination requirements of the BOC Forbearance Order were strictly applied.

Based on MCI WorldCom's experience, however, the Commission will need to define those nondiscrimination requirements precisely in order to ensure that SBC does not use its freedom from the provisions of Section 272 to achieve anticompetitive ends. In its interconnection negotiations, SBC has refused to include in the directory database it makes available to MCI WorldCom any listings for subscribers of certain other local exchange carriers (LECs) serving adjoining territories, even though it uses such listings in the provision of its own directory services. In Texas, SBC was required to make such LEC listings available to MCI WorldCom's predecessor by an Arbitration Award (MCI Arbitration Award) issued by the Public Utility Commission (PUC), a copy of which is attached.⁸

In the Texas PUC arbitration proceeding and in other state interconnection negotiations, SBC asserts that the LECs whose subscriber listing information it refuses to provide have not authorized SBC to provide their subscriber listings to third parties. Nevertheless, SBC includes information for those subscribers in the database it uses in providing its own directory services.⁹ Thus, contrary to its representation in its

⁸ Petition of MCI Telecommunications Corporation for Arbitration of Directory Assistance Listings Issues Under Federal Telecommunications Act of 1996, Docket No. 19075 (Tex. PUC Aug. 13, 1998) at 7-9.

⁹ Id. at 7.

Petition, SBC is now using data for its own directory services that it refuses to make available to MCI WorldCom and, presumably, other competitive directory service providers as well. Moreover, since the same databases that SBC uses for its DA service are also going to be used for its RDA service, the latter will obviously also include listings for such non-SBC customers.

Accordingly, the Commission should not assume that SBC is providing nondiscriminatory access to directory listing information through its interconnection agreements or that it will do so voluntarily in the future. Rather, SBC is resisting any such obligation in all of its interconnection negotiations. Any grant of the forbearance requested in its Petition therefore should be conditioned on an explicit requirement that it provide such nondiscriminatory access to all of the DA database listing information that it uses in the provision of its own RDA service, including listings that it has obtained from other LECs.¹⁰

Moreover, as required by the BOC Forbearance Order, "access to all of the listing information that [the BOC] uses to provide reverse directory services" must be provided to unaffiliated entities "at the same rates, terms, and conditions, if any, that it charges or imposes on itself."¹¹ In the MCI Arbitration Award, the Texas PUC found that "[b]ecause SWBT has bulk access to

¹⁰ Moreover, these conditions should apply to any and all current and future SBC entities providing interLATA RDA service using these DA databases.

¹¹ BOC Forbearance Order at ¶ 82.

directory assistance listings in its database," "nondiscriminatory access" to such listings means bulk access.¹² In particular, nondiscrimination requires access in readily accessible tape or electronic bulk format, with nightly updates, to any and all DA databases, including all those provided by independent LECs to SWBT, that are used by SWBT in providing its directory services to end users.¹³

The Texas PUC also found, based on SBC's own cost study,¹⁴ that SWBT's total element long run incremental costs (TELRIC) of providing DA database listings are as follows:

Non-recurring set-up charge, general	\$11,500
Non-recurring set-up charge, MCI ¹⁵	\$ 4,800
Price per listing, initial load	\$ 00.0011
Price per listing update, electronic	\$ 00.0014
Price per listing update, magnetic tape	\$ 00.0019 ¹⁶

Since those are the actual forward-looking costs, including a reasonable profit,¹⁷ to SBC of providing DA database listing information, those are the actual costs that it "imposes on itself." The Commission should therefore grant forbearance only on condition that SBC charge unaffiliated entities rates for such

¹² MCI Arbitration Award at 5.

¹³ Id. at 6-9.

¹⁴ Id. at 12.

¹⁵ This charge includes costs associated with the development of the cost studies required for the PUC proceeding and is to be divided among the first four carriers requesting DA listings in bulk format. MCI Arbitration Award at 13-14.

¹⁶ MCI Arbitration Award at 13-14.

¹⁷ Id. at 12.

information that are no higher than those TELRIC rates. SBC's proposed rate of \$ 0.0585 per listing,¹⁸ which is over 40 times higher than the TELRIC rate per listing for electronic updates and over 53 times higher than the TELRIC rate per listing for the initial load, would be grossly unreasonable and discriminatory.

Conclusion

For the above-stated reasons, SBC's Petition for Forbearance should be denied as to its proposed interLATA operator assisted RDA service, and the Petition should be granted as to its proposed interLATA electronic RDA service only on the conditions spelled out above, in order to ensure nondiscrimination in the provision of all DA database listing information to unaffiliated providers.

Respectfully submitted,

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Dated: November 30, 1998

¹⁸

Id. at 11.

ATTACHMENT A

DOCKET NO. 19075

PETITION OF MCI	§	PUBLIC UTILITY COMMISSION
TELECOMMUNICATIONS	§	
CORPORATION FOR ARBITRATION	§	OF TEXAS
OF DIRECTORY ASSISTANCE	§	
LISTINGS ISSUES UNDER FEDERAL	§	
TELECOMMUNICATIONS ACT OF	§	
1996		

ARBITRATION AWARD

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I. INTRODUCTION

The Federal Telecommunications Act of 1996¹ (FTA) requires that when an incumbent local exchange company (ILEC) and a new local service provider (LSP) are unable to negotiate the terms and conditions of interconnection agreements, either of the negotiating parties "may petition a State commission to arbitrate any open issues." FTA § 251(b)(1). The Public Utility Commission of Texas (the Commission) is responsible for arbitrating disputes pursuant to the FTA.² The Commission anticipated it would be called upon to resolve disputes under the FTA, and promulgated a dispute resolution rule that established procedures for conducting arbitration proceedings.³

On March 18, 1998, MCI Telecommunications Corporation and MCI Access Transmission Services, Inc. (collectively MCI or Petitioner) petitioned the Commission to resolve disputes with Southwestern Bell Telephone Company (SWBT) over the pricing and availability of directory assistance listings in SWBT's directory assistance database.

The Commission's arbitration panel (the Arbitrators) is composed of two Commission staff members: Howard Siegel from the Office of Policy Development and Lynne LeMon from the Office of Regulatory Affairs. Mr. Siegel and Ms. LeMon were sworn in as Arbitrators on July 8, 1998 and conducted the arbitration hearing on July 9, 1998 in accordance with the Commission's dispute resolution rules. The Arbitrators' decisions on disputed issues are found in Section II. of the Arbitration Award. Section III. includes the implementation schedule. Section IV includes the Arbitrators' conclusions.

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, *codified at* 47 U.S.C. §§ 251 *et seq.* Hereinafter, all citations to FTA will be to the 1996 Act as codified in the United States Code. (FTA).

² The Commission has the authority to conduct the FTA arbitrations pursuant to § 252 of FTA and §§ 14.001, 52.001-002, 60.001-003, and 60.121-128 of Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§11.001-63.063 (Vernon 1998) (PURA).

³ P.U.C. PROC. R. §§ 22.301 - 22.310 (establishes procedures for mediation, arbitration, and approval of interconnection agreements under FTA).

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II. DECISIONS ON ISSUES PRESENTED FOR ARBITRATION

The following decisions represent the Arbitrators' resolution of issues presented for arbitration by SWBT and MCI. Issues, and their related decisions, are grouped by topic. Because FTA § 252(b)(4) limits issues that may be decided in arbitration to those set forth by the parties, the Arbitration Award addresses only the issues presented for arbitration.

A. FTA REQUIREMENTS

The parties presented three issues requiring an interpretation of FTA requirements pertaining to directory assistance. The issues are:

- Issue 1 *Does the Federal Telecommunications Act of 1996 (FTA) require SWBT to provide to MCI any and all directory assistance databases, in bulk format with nightly updates, that are used by SWBT and/or affiliates in providing directory assistance services to end users?*
- Issue 2 *Whether SWBT has met the requirements of FTA Section 251(c)(3) for unbundled access to SWBT's directory assistance database by offering MCI the ability to read the information contained in the database, and to enter its own customer information into the database?*
- Issue 3 *Whether SWBT has met the requirements of FTA Section 251(b)(3) by offering MCI access to SWBT's directory assistance listing information in readily accessible tape or electronic format*

1. PARTIES' POSITIONS

MCI requests access to SWBT's directory assistance database listings in bulk format,⁴ rather than on a dip-by-dip basis.⁵ MCI's position is that directory assistance listings and access to the directory assistance database are unbundled network elements (UNEs). According to MCI, FTA § 251(c)(3) requires that directory assistance database listings be provided in bulk format as UNEs at rates based upon total element long run incremental costs (TELRIC).

⁴ The bulk format requested by MCI means that SWBT would provide access to all of its directory assistance listings simultaneously rather than on an individual basis.

⁵ Dip-by-dip is the term used by the parties to refer to directory assistance access on a per listing basis.

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SWBT argues that there is a distinction between access to directory assistance service, access to the directory assistance database and access to directory listings (also referred to as subscriber list information). According to SWBT, each of these carry distinctly differing obligations under the FTA. SWBT's position is that directory assistance listings are governed by FTA § 251(b)(3), not § 251(c)(3). SWBT reasons that because directory assistance listings are subject to § 251(b)(3) of the FTA, they are not UNEs and the obligation to base the price upon TELRIC does not exist. SWBT believes it meets its obligations to MCI, pursuant to FTA § 251(b)(3), by providing access to directory assistance listings in bulk format at market-based rates.

2. DISCUSSION OF THE ISSUES

On September 30, 1997, the Commission established that access to the directory assistance database is a UNE.⁶ Similarly, on December 19, 1997, the Commission defined directory assistance listings as UNEs.⁷ Because both access to the directory assistance database and directory assistance listings are UNEs, they are governed by FTA § 251(c)(3).

FTA § 251(c)(3) requires an ILEC, such as SWBT, to provide a requesting telecommunications carrier, such as MCI, nondiscriminatory access to network elements on an unbundled basis. Such access must be provided at rates, terms and conditions that comply with the overall requirements of §§ 251 and 252. In particular, FTA § 252(d)(1) states that the just and reasonable rate established for a UNE shall be based upon the cost of providing the UNE, shall be nondiscriminatory and may include a reasonable profit.

A review of the FCC's First Report and Order⁸ following enactment of the FTA is useful for evaluating FTA requirements associated with UNEs. A summary of key provisions in the First Report and Order are:

⁶ Docket No. 16189 et al, Arbitration Award, Appendix C, page 45, September 30, 1997.

⁷ Docket No. 16189 et al, Arbitration Award, Appendix C, page 4, December 19, 1997.

⁸ First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98 (Aug. 8, 1996) (FCC Interconnection Order).

- The FCC concluded that the definition of the term “network element” broadly includes all “facilit[ies] or equipment used in the provision of a telecommunications service,” and all “features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.”⁹ (emphasis added)
- The FCC required ILECs to provide unbundled access to call-related databases and directory assistance facilities.¹⁰
- The FCC cited a shared use arrangement between GTE and Pacific Bell as “one possible method” of access to the directory assistance database and operator service database.¹¹

Key provisions in the FCC’s Second Report and Order include:

- The FCC determined that it is not possible to achieve seamless and nondiscriminatory access to directory assistance without requiring access to the underlying databases.¹²
- To meet the requirement of nondiscriminatory access, a LEC must offer competitors access at least equal in quality to the access received by the LEC.¹³

The Arbitrators view MCI’s request for directory assistance listings in bulk format as one possible method of obtaining nondiscriminatory access to SWBT’s directory assistance database. The key term is “nondiscriminatory.” Because SWBT has bulk access to directory assistance listings in its database, MCI is entitled to such access.

To the issue of whether SWBT’s obligation is required by FTA § 251(b)(3) or § 251(c)(3), the Arbitrators note that there is some ambiguity in the FCC’s orders. For example, SWBT argues that the bulk directory assistance listings requested by MCI are not a database or

⁹ Id., ¶ 262.

¹⁰ Id., ¶ 366, 516 and 534.

¹¹ Id., ¶ 538.

¹² Second Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, ¶ 144 (Aug. 8, 1996) (FCC Interconnection Order).

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any other facility specified by the FCC as a UNE. MCI argues that access to bulk directory assistance listings is, in effect, access to the directory assistance database and, therefore, falls under the FCC's interpretation of FTA § 251(c)(3).

The Arbitrators find that this ambiguity in the FCC's orders need not be addressed because even under SWBT's analysis, the Arbitrators believe it is appropriate to treat directory assistance listings, provided in bulk format, as a UNE. UNEs listed by the FCC are not exhaustive. Instead, state commissions have the authority to identify other facilities as UNEs in addition to those identified by the FCC.

With regard to directory assistance listings provided in bulk format, the Arbitrators find the bulk format to be essential to MCI's method of providing directory assistance. Consequently, the Arbitrators deem the bulk format provision of directory listings to MCI, a method for MCI to obtain nondiscriminatory access to the directory assistance database, to be a UNE.

3. ARBITRATORS' DECISION

SWBT is ordered to provide to MCI, in readily accessible tape or electronic format, access to any and all directory assistance databases, in bulk format with nightly updates, that are used by SWBT in providing directory assistance services to end users. The databases referred to in this Award are the two SWBT directory assistance databases currently located in Houston, Texas and Dallas, Texas, that, when combined, include directory assistance listings of SWBT customers located in Texas, listings of businesses located in other states that obtain a Texas presence, listings of non-Bell customers and listings of certain customers located in states with exchange areas contiguous to Texas.¹⁴

B. DIRECTORY ASSISTANCE LISTINGS OF INDEPENDENT TELECOMMUNICATIONS CARRIERS

The parties presented three issues requiring a decision on the directory assistance listings of independent telecommunications carriers. The issues are:

¹³

Id.

¹⁴

This order does not require SWBT to provide directory assistance listings to MCI for customers in other SWBT states other than the narrow exceptions listed above.

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- Issue 4 *Does FTA require SWBT to provide to MCI the directory assistance databases, in bulk format with nightly updates, of all independent telecommunications carriers who provide their customer listings to SWBT and/or the customer listings of all independent telecommunications carriers who provide such to SWBT?*
- Issue 5 *Whether SWBT is required by the FTA to provide MCI with directory assistance listing information obtained by SWBT pursuant to contractual agreements with ILECs and other competing providers without the express permission of those carriers?*
- Issue 6 *Whether SWBT is required by the FTA to provide MCI with directory assistance listing information obtained by SWBT pursuant to contractual agreements with ILECs and other competing providers, when those carriers specifically have instructed SWBT that it may not provide such information to other competing providers?*

1. PARTIES' POSITIONS

MCI's position is that the FTA's interconnection provisions require all telecommunications carriers to provide nondiscriminatory access to directory assistance service and directory listings in bulk. MCI further explains that the value of the directory assistance database lies in its totality and, by omitting the listings of twelve carriers who instructed SWBT not to release their directory assistance listings to MCI, the value of the directory assistance database to telecommunications carriers competing with SWBT is diminished.

SWBT's position is that SWBT should not be required to provide access to the directory assistance databases of independent telecommunications carriers to MCI. However, SWBT acknowledges that the FTA requires independent telecommunications carriers to provide nondiscriminatory access to directory listing information. SWBT believes it must honor the instructions of twelve (12) independent local exchange companies to NOT release their information provided to SWBT for inclusion in the directory assistance database.

2. DISCUSSION OF THE ISSUES

FTA § 251(b)(3) clearly and unambiguously imposes a requirement on all telecommunications carriers to provide dialing parity to competing providers of telephone exchange service and telephone toll service, as well as a duty to permit all such providers to have

nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listings, with no unreasonable dialing delays. [emphasis added] The Arbitrators interpret this section of the FTA to allow MCI access to all directory assistance listings in SWBT's database regardless of the identity of the underlying carrier. This interpretation is consistent with the Commission's treatment of access to white page directory listings in the Arbitration Order dated November 8, 1996.¹⁵

The Arbitrators' interpretation of FTA requirements is also consistent with the FCC's analysis of the issue. The FCC's Second Report and Order¹⁶ states:

Requiring "nondiscriminatory access to directory listings" means that, if a competing provider offers directory assistance, any customer of that competing provider should be able to access any listed number on a nondiscriminatory basis, notwithstanding the identity of the customer's local service provider, or the identity of the telephone service provider for the customer whose directory listing is requested.

As stated, the FCC limits such access to "listed" numbers. The FCC places responsibility upon carriers in SWBT's position for ensuring that access is permitted "only to the same information that is available to their own directory assistance customers."¹⁷

The Arbitrators view the instructions from twelve carriers prohibiting SWBT from releasing the directory assistance listings of their customers, in bulk, to MCI as creating disparate treatment among competitors in contravention of the explicit requirements of the FTA and the FCC's interpretation of the FTA. Nevertheless, the Arbitrators prefer the twelve carriers be provided an opportunity to voluntarily withdraw their contractual prohibitions rather than invite litigious encounters between the parties. Therefore, the Arbitrators establish a grace period for SWBT and MCI to request voluntary compliance from the twelve carriers.

3. ARBITRATORS' DECISION

¹⁵ Docket No. 16189, et al, No. 43. SWBT must provide nondiscriminatory access to all published subscriber listings, regardless of the underlying carrier.

¹⁶ FCC 96-333, ¶ 135, August 8, 1996.

¹⁷ Id.

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SWBT shall provide to MCI access to SWBT's directory assistance databases, in bulk format with nightly updates, including SWBT's directory assistance listings and the listings of independent telecommunications carriers who provide their customer's directory assistance listings to SWBT. This requirement is effective immediately for all telecommunications carriers except the twelve that instructed SWBT not to release directory assistance listings in bulk format. The requirement is effective for those twelve carriers on either (1) the date their contractual prohibition against releasing the listings is withdrawn or (2) November 1, 1998, whichever is sooner. On November 1, 1998, even if contractual prohibitions against the release of directory assistance listing information in bulk format have not been withdrawn, MCI, along with SWBT, shall have bulk format access to listings of the twelve carriers who currently have a prohibition against such access.

C. 911 AND E911 ISSUES

The parties presented three issues requiring a decision on the availability of 911 and E911 directory assistance listings. The issues are:

- Issue 7 *Does FTA require SWBT to provide to MCI the directory assistance databases, in bulk format with nightly updates, of all emergency 911 authorities who provide their 10-digit translated telephone number to SWBT and/or the listings of all emergency 911 authorities who provide such to SWBT?*
- Issues 8 *Whether the "DA listings of all emergency 911 authorities" requested by MCI already are included as part of the "directory assistance listing" information provided to MCI in readily accessible tape or electronic format?*
- Issue 9 *Whether SWBT is required by the FTA to provide MCI with any 911 emergency agency listing information that is not available to SWBT's directory assistance operators as part of SWBT's directory assistance listing information?*

1. PARTIES' POSITIONS

On August 6, 1998, the parties filed a "Stipulation of Understanding" that resolves these issues. The parties agreed that SWBT will provide, to MCI, SWBT's 7 and/or 10 digit listed numbers of all police, fire, ambulance, poison control, and any other emergency service providers. SWBT will also provide such listed numbers for all independent carriers that have given their consent for SWBT to release their directory listing information. SWBT further stipulates that all 7 and/or 10 digit listed phone numbers for such emergency service providers are maintained in SWBT's directory assistance database.

2. ARBITRATORS' DECISION

The Arbitrators accept the terms agreed to by the parties and order the parties to abide by the Stipulation of Understanding. For the twelve carriers that prohibited SWBT from releasing their directory assistance listings in bulk format to MCI, the time limits under B.3. shall apply.

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D. PRICING ISSUES

The parties presented two issues requiring a decision on the pricing of directory assistance listings. The issues are:

- Issue 10 *In accordance with the Public Utility Commission's (PUC) determination that SWBT must provide unbundled network elements (UNEs) to requesting telecommunications providers at TELRIC-based prices, do TELRIC-based rates apply to SWBT's provision of any and all directory assistance databases, including those of independent telecommunications providers and emergency 911 authorities?*
- Issue 11 *Whether SWBT's directory assistance listing information, provided to MCI in readily accessible tape or electronic format, is a network element under FTA Section 251 (c)(3) and therefore subject to the pricing standards for network elements under FTA Section 252(d)(1)?*

1. PARTIES' POSITIONS

MCI's position is that directory assistance listings and access to the directory assistance database are UNEs. According to MCI, FTA § 251(c)(3) requires that UNE rates be based upon TELRIC. MCI offers three rate design proposals with rates lower than the rates proposed by SWBT. MCI prefers that volume-insensitive costs be recovered through a volume-insensitive charge and volume-sensitive costs be recovered through a volume-sensitive charge.

SWBT's position is that directory assistance listings are governed by FTA §251(b)(3), not § 251(c)(3). SWBT reasons that because directory assistance listings are subject to §251(b)(3) of the FTA, they are not UNEs and the obligation to base the prices upon TELRIC does not exist. Alternatively, SWBT proposes, if the Arbitrators determine that directory assistance listings are UNEs, the establishment of a bulk format rate of \$.0585 per listing.¹⁸

¹⁸ The rate of \$.0585 per listing [dip-by-dip access] was established in the Commission's Arbitration Award in Docket No. 16189, et al, December 19, 1997, Appendix B, Page 14.

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2. DISCUSSION OF THE ISSUES**a. Pricing Methodology**

At the Arbitrators' request, SWBT provided two new cost studies to calculate the cost of providing directory assistance listings in bulk format using a TELRIC methodology and a LRIC methodology. As discussed in response to Issues 1, 2 and 3, access to the directory assistance database and directory assistance listings, including directory assistance listings provided in bulk format, are UNEs governed by FTA § 251(c)(3).

FTA § 251(c)(3) requires an ILEC, such as SWBT, to provide a requesting telecommunications carrier, such as MCI, nondiscriminatory access to network elements on an unbundled basis. Such access must be provided at rates, terms and conditions that comply with the overall requirements of §§ 251 and 252. FTA § 252(d)(1) states that: the just and reasonable rate established for a UNE shall be based upon the cost of providing the UNE; shall be nondiscriminatory; and may include a reasonable profit. This Commission has previously adopted the TELRIC methodology for UNE pricing.

b. Determination of Rates

SWBT's TELRIC study indicates that a certain category of costs are not volume-sensitive.¹⁹ SWBT proposes the non-volume sensitive costs be recovered through a per listing rate of \$.0064 for directory assistance listings provided to MCI during the initial load. Thereafter, a lower per listing rate would apply for nightly updates of new or revised directory assistance listings.

Some of the costs associated with providing SWBT's directory assistance listings in bulk format are volume-sensitive. To recover volume-sensitive costs, SWBT proposes two options: a price per updated listing of \$.0019 when provided electronically or a price per updated listing of \$.0026 when provided using magnetic tapes.

The Arbitrators generally agree with the format used by SWBT for calculating the costs, with one exception. SWBT estimated that, on average, only 73% of listings in the directory

¹⁹ Texas 1998-2000, Directory Assistance Listing Cost Study, Total Element Long Run Incremental Cost Study, Form 2.

assistance database would be requested by a carrier for the initial load in bulk format. The Arbitrators prefer to use 100% of bulk format listings as the estimated demand.

The Arbitrators generally agree with SWBT's proposed per listing price structure. The Arbitrators depart from the per listing price structure only with respect to the recovery of non-volume sensitive costs.

The non-volume sensitive costs fall into two categories. First, there are non-volume sensitive costs to be recovered through a flat non-recurring charge to any carrier that requests directory assistance listings in bulk format. Additionally, there are non-volume sensitive costs to be recovered through a flat non-recurring charge to MCI.²⁰ The non-recurring costs charged to MCI shall be shared among the first four carriers requesting directory assistance listings in bulk format. Thus, if other carriers request access to SWBT's directory assistance database listings in bulk format, MCI will receive a partial bill credit of the non-recurring charge billed to MCI and the other carrier(s) will share these costs. SWBT's costs will be fully recovered.

3. ARBITRATORS' DECISION

The Arbitrators hold that TELRIC-based rates shall apply for bulk format access to SWBT's directory assistance database. The rates are listed below in Table 1.0.

Table 1.0
Rates for Access to Directory Assistance Database Listings in Bulk Format

Non-recurring set-up charge, general ²¹	\$11,500
Non-recurring set-up charge, MCI	\$ 4,800
Price per listing, initial load	\$.0011
Price per listing update, electronic	\$.0014
Price per listing update, magnetic tape	\$.0019

²⁰ This category includes costs associated with cost study development.

²¹ This set-up charge applies to customers who opt to request access to SWBT's directory assistance listings in bulk format pursuant to the Arbitration Award.

SWBT shall bill MCI a general non-recurring charge of \$11,500 to set up the initial load of directory assistance database listings. In addition to the general non-recurring set-up charge, SWBT shall also bill MCI a non-recurring charge of \$4,800 to recover the cost of cost study development. Although the \$4,800 charge shall be billed to MCI initially, the \$4,800 charge shall be shared between the first four carriers (including MCI) who request access to SWBT's directory assistance database listings in bulk format. If one or more additional carriers request bulk access, up to the first three additional carriers shall share in recovery of the \$4,800 cost and MCI shall receive a partial bill credit.

Each directory assistance database listing provided to MCI as part of the initial load shall be priced at \$.0011. Thereafter, each updated listing provided to MCI electronically shall be priced at \$.0014. Each updated listing provided to MCI via magnetic tape shall be priced at \$.0019. These rates were developed using SWBT's cost studies and a forecasted demand of 100% of directory assistance listings in SWBT's database.

E. RESTRICTIONS ON THE USE OF DIRECTORY ASSISTANCE LISTINGS

The parties presented two issues requiring a decision on the kinds of restrictions applicable to MCI's use of SWBT's directory assistance listings. The issues are:

- Issue 12 *What restrictions and/or requirements, if any, can SWBT impose on MCI's use of the directory assistance databases and/or the customer listings in such databases upon SWBT's provision to MCI of the databases and/or customer listings in accordance with FTA and applicable FCC and/or PUC rulings?*
- Issue 13 *Whether the directory assistance listing information provided by SWBT may be used by MCI for any purpose other than provision of directory assistance services?*

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1. DISCUSSION OF THE ISSUES

On August 6, 1998, the parties filed a "Stipulation of Understanding" that resolves these issues. The parties agreed that any directory listing information provided by SWBT to MCI, pursuant to the rates, terms and conditions of their interconnection agreement as it currently exists, or as it may be modified or supplemented based upon the Arbitration Award in this proceeding, will be used by MCI solely for the purpose of providing directory assistance telecommunications services to its retail customers. The term "directory assistance telecommunications services" as used in the Stipulation of Understanding includes, but is not limited to, voice, electronic and reverse directory assistance telecommunications services.

2. ARBITRATORS' DECISION

The Arbitrators accept the terms agreed to by the parties and order the parties to abide by the Stipulation of Understanding. Additionally, the Arbitrators do not require SWBT to provide to MCI access to unlisted telephone numbers or other information that an end user customer designates as private.²² The Arbitrators note that any telecommunications carrier requesting the opportunity to opt into the terms and conditions of this Arbitration Award are required to abide by the restrictions in the Stipulation of Understanding and the Award.

III. IMPLEMENTATION SCHEDULE

The following implementation schedule shall be followed:

November 4, 1998

MCI shall file revisions to its interconnection agreement with Southwestern Bell Telephone Company (SWBT). The pages shall contain a footer stating the revision date.

²² FCC 96-333, ¶ 135, August 8, 1996 and FCC 96-325, ¶ 492, August 8, 1996.

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November 16, 1998

Deadline for comments on interconnection agreement from interested parties.

At a to be determined open meeting in December of 1998

Commission approval of MCI's interconnection agreement with SWBT.

IV. CONCLUSION

The primary objective of the Arbitrators in granting MCI's request for access to the directory assistance database in bulk format is to encourage innovation and new product development within the directory assistance service market - an objective consistent with Congress' intent to encourage competition in local exchange markets through enactment of the FTA.

In this arbitration, MCI represented that it wished to control its own destiny in the directory services market and not be limited by the features and functionalities of SWBT's database software. The Arbitrators' decision will enable MCI to expand its directory assistance product line using the features and functionalities inherent in MCI's database system. As stated in the Stipulation of Understanding filed August 6, 1998, new directory assistance telecommunications services include, for example, voice, electronic and reverse directory assistance services.

MCI pointed out that, without bulk access to the listings in SWBT's directory assistance database, MCI would, as a logistical necessity, be required to coordinate with SWBT to introduce each new directory assistance service. Our decision will fully unbundle this network element and will eliminate the inter-dependency of MCI upon SWBT's configuration of its directory assistance database. Moreover, with the provision of bulk access to MCI, SWBT will not have an insider's preview of MCI's new product introductions and promotions of directory assistance service.

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The Arbitrators conclude that this Arbitration Award reflects a resolution of disputed issues that complies with standards set in FTA § 251, any applicable regulations prescribed by the Federal Communications Commission (FCC) pursuant to FTA § 251, FTA § 252(c), FTA § 222, relevant provisions of PURA, and the Commission's dispute resolution rules.

SIGNED AT AUSTIN, TEXAS on the 13th day of August, 1998.

FTA § 252 ARBITRATION PANEL

LYNNE LeMON
ARBITRATOR

HOWARD SIEGEL
ARBITRATOR

Commission Staff Arbitration Advisors
Nelson Parish

Certificate of Service

I, Sylvia Chukwuocha, do hereby certify that copies of the foregoing Comments of MCI WorldCom, Inc. were sent via first class mail, postage paid to the following on the 30th day of November, 1998.

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